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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,994	10/15/2003	James B. Prichard	13039:239 (CRAN01-00239)	5835
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/685,994	Applicant(s) PRICHARD ET AL.	
	Examiner Rakesh Kumar	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/23/2006; *Remarks*.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Final Rejection

1. Applicants arguments filed 01/23/2006 have been fully considered but they are not persuasive for reasons detailed below.

2. The prior art rejections are maintained or modified as follows:

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 and 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falk et al. (U.S. Patent Number 5,285,926) in view of Krakauer (U.S. Patent Number 4,317,604).

5. Referring to claims 1,3,10 and 12. Falk et al. discloses an apparatus and a method to operate a drum merchandising system (10) comprising: transparent plastic trays (42) including one or more mounting supports (44) for mounting the tray (42) on a

support (36) within a drum (30) type vending machine, the tray (42) adapted to be divided into a plurality of tray zones (see Figure 4) by one or more tray subdivides (90) that may be selectively mounted in any of the two predetermined positions (see predetermined positions disposed on the tray by members 88 and 82; Figure 4), wherein the tray (42) includes at least one of a slot (88) or a guide (82) selectively receiving a tray subdivider (90) separating one tray zone from another (Col 6 lines 29-40, Col 7 lines 31-47).

Futhermore, Falk discloses a drum merchandising system (10) where the trays (42) are divided into tray zones (Figure 4, area in between dividers 90) that are one or more of equal or unequal sizes depending on the location of the subdividers (90) positioned in tray (42). Faulk discloses the subdivides (90) disposed in predetermined positions being radially projecting from a center emanating from the inner edge (see inner edge located at top area in Figure 4 where members 88 are disposed) to an outer edge (see outer edge of tray 42).

Falk et al. discloses the partitioning subdividers (90) to disposed in a radial orientation in the tray however, Faulk does not disclose the partitioning subdividers (90) to be positioned in a radially askew orientation in the tray.

Krakauer discloses vending marching apparatus (Figure 1) disposing partitioning subdivider (96) in a tray (Figure 4) positioned in a radially askew orientation in the tray (Figure 4, 5; Col 5 line 62-Col 6 line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the apparatus of Falk, which discloses positioning subdividers in a tray extending from the inner edge to an outer edge to form adjustable partitions in the tray with the teaching of Krakauer that include positioning subdividers in a radially askew orientation within the tray. Thus, It would have been obvious to one of ordinary skill in the art to have positioned the subdividers in a radially askew orientation extending from the inner edge to an outer edge of the tray in order to further customize the tray zones to the particular item being displayed.

6. Regarding claim 10, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

7. Regarding claim 12, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

8. Referring to claims 2 and 11. Falk et al. discloses an apparatus and a method to operate a drum merchandising system (10) wherein, the tray (42) includes a plurality of slots (88), a plurality of guides (82; Figure 4), or both selectively receiving a plurality of tray subdividers (90) separating at least three zones on the tray (42).

Regarding claim 11, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

9. Referring to claims 4 and 13. See claim 1. Falk et al. discloses a drum merchandising system (10) further comprising: a center support member (34) on which the at least one tray (42) is mounted; and a vend door (12) disposed proximate to an outer edge of the at least one tray (42), wherein the vend door (12) is selectively movable between a closed position and an open position, wherein the vend door (12), when in the open position, permits access to only one tray zone (Figure 1, 2; Col 5. line 50-65, Col 8 line 29-36).

10. Regarding claim 13, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

11. Referring to claims 5 and 14. Falk et al. discloses a drum merchandising system (10) further comprising:

at the center support member (34);

a plurality of trays (42) each including one or more mounting supports (44; Figure 2) for mounting the tray (42) on a support (34) within a vending machine, the plurality of trays (42) mounted on the center support member (34) and including at least one tray,

wherein the trays are mounted at each level (40) of nine levels (Figure 1; Col 6 lines 29-45; there are nine tray levels 40 shown) spaced apart evenly;

a vend door (12; Figure 2) disposed at each level (see vend doors 12 at each level in Figure 1) proximate to an outer edge of one of the trays at that level (see position of door 12; Figure 2), wherein the door (12) is selectively movable between a closed position and an open position (see handle 18; Figure2),

wherein each tray (42) may be divided into up to five tray zones (in Falk there are six zones),

wherein the vend door (12), when in the open position, permits access to only one tray zone of the one tray, and

and wherein the center support member (34) may be selectively rotated to position any selected tray zone on any of the plurality trays proximate to the vend door (12) so that the selected tray zone is accessible when the vend door (12) is in the open position (Col 2 line 11-25, Col 3 line 8, Col 4 line 15). In addition Falk et al. discloses associating prices individually with each tray zone on each tray at each level (Col 3 line 32-38; Col 4 line 39-46).

Falk et al. discloses mounting six trays, but does not specifically disclose mounting only five trays to the center support member (34), in addition Falk does not disclose each level of the trays to be five inches apart.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to dispose only five trays at each level on the center support

member (34) versus six as taught by Falk, in addition it would have been further obvious to position each level 40 of trays to be five inches apart from each other. Such a selection would represent a mere design choice of space required for displaying the target items and be well within the level of skill of an artisan.

12. Regarding claim 14, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

13. Referring to claims 6 and 15. Falk et al. discloses a drum merchandising system (10) wherein a distance between the open and closed positions (Col 5 line 57) for the vend door (12) is defined by at least one tray (42) subdividers (70) or (90) (Figure 3; Col 8 line 27-40). These subdividers as disclosed can comprise different size zones thus changing the opening clearance. Regarding claim 1, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

Regarding claim 15, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

14. Referring to claims 8. Falk et al. discloses an enclosure (16) having an opening within at least a sidewall, wherein the vend door (12) is positioned over a portion of the opening when in the closed position (Figure 2); a motor (106) for rotating the center support member (34); and controls that (Col 3 line 11; Col 10 line 65), when actuated (Col 4 line 15), rotate the center support member (34) to position a selected tray zone proximate to the vend door (24; Col 8 line 27-37).

15. Referring to claims 9. See claim 1 and 4. Falk et al. discloses a drum merchandising system (10) further comprising: a plurality of trays (42), including the at least one tray (42), each mounted on the center support member (34) at one of a plurality of different levels (40), each tray (42) adapted to be divided into a plurality of tray equal and unequal zones (Figure 4) and including at least one of a slot (88) or a guide (82) selectively receiving a tray subdivider (90) separating one tray zone from another (Figure 2 and 4); and a plurality of vend doors (12; Figure 1), including the vend door (12), each associated with a different level (40) and each separately selectively movable between an open position and a closed position (Col 5 line 1-65), wherein each vend door (12), when in the open position, permits access to only one tray zone on a corresponding tray (Col 8 line 36).

16. Claims 7, 16, 17-19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falk in view of Krakauer and further in view of Varley (U.S. Patent Number 5,313,393).

17. Referring to claims 7, 16, 19 and 20. See claims above. Falk et al. discloses using a microprocessor to control a solenoid (110) to activate the removal of a plunger (112) disposed in a corresponding series of holes associated with each possible position of the partitioning tray wall dividers (70) and subdividers (70) to exactly register with the appropriate vend door (12) access (Col 8 line 34).

Falk et al. does not disclose using a catch on a tray subdivider for controlling the distance of the vend door opening.

Varley discloses a tray latch pin (57) (a catch) disposed on the outer surface of the tray (43) positioned to coincide with the position of each divider on the tray separating the compartment. Tray latch pin (57) acts in conjunction with a user access door latch (61) to provide a vend door (37) open access to the to the corresponding a tray zone (Figure 4 and 5).

Varley teaches of positioning the catch mechanism on the outside of the level tray (Figure 5) but does not disclose positioning the tray latch pin (57) on the partition subdividers dividers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify Falk in view of Krakauer with the teachings of Varley and incorporate latch pins disposed on the subdividers to control the size of access to proximate to the position of the subdividers. As a result, the control mechanism will not need to be calibrated once the sizes of the tray zones is changed as different products are set to be displayed.

Regarding claim 16, see claim 13, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

Regarding claim 20, see claim 1 and above.

18. Referring to claim 17 and 18. See claims above. Falk et al. discloses a drum merchandising system comprising: an enclosure (comprising component members 16, 12, 18 and 32) around at least a portion of a drum perimeter (30); a center support member (34) within the enclosure (comprising component members 16, 12, 18 and 32); at least one tray (42) mounted on the center support member (34) at each of a plurality of different levels (40); each tray (42) logically divided into a plurality of tray zones (Figure 4); at least one tray (42) subdivider (90) received by at least one of a slot (88) or a guide (82) on at least one of the trays (42), the tray (42) subdivider (70) separating one tray zone on the at least one of the trays from another; and a vend door (12) disposed proximate to an opening through the enclosure (comprising component members 16, 12, 18 and 32) at each of the different levels (40), each vend door (12) corresponding to the at least one of the trays (42) having a tray subdivider (90), selectively movable between an open position and a closed position, wherein the vend door (12), when in an open position, and the tray subdivider (90) permit access to only one tray zone on a corresponding tray (42).

Regarding claim 18, see claim 9.

Response to Arguments

19. Applicant's argument, see page 11 line 5, filed 01/23/2006, with respect to the deleting limitations "drum type" and "logically" from the claims have been fully considered and are persuasive. The claim rejection under 35 U.S.C 112 second paragraph of Office Action filed 10/20/2005 has been withdrawn.

20. Applicant's arguments filed 01/23/2006 have been fully considered but they are not persuasive.

21. Applicant's arguments with respect to claim 1-20 have been considered but are moot in view of the new ground(s) of rejection.

The applicant has amended claims 1-20 to incorporate the limitation "being radially askew from an inner edge to an outer edge" along with other limitation that were not present in the original filed claims; as a result the applicant has traversed the 35 U.S.C. 102(b) rejections present in the Office Action filed 10/20/2005, however in view of the teaching as taught by Falk and in view of Krakauer has constituted a new ground of rejection. In addition, claims that have been amended and that were unable to traverse the original rejections in view of the prior art have been maintained, see claims above for specific ground(s) for rejection.

22. Referring to claims 1,10 and 17. The applicant recites, "the tray is adapted to be divided by a radially askew subdivider" and indicates that the cited references do not teach of the of the specific feature disclosed.

23. The applicant's arguments have been fully considered but they are not persuasive, it is to be understood that prior grounds of rejection do not meet the rejection grounds for the amended claims. It is true that "radially askew subdivider" feature does not exist in the primary cited art (Falk) however, as stated in the claims, Falk clearly teaches of a vending apparatus consisting of multiple levels of trays supported on a central support member, wherein each level consists of six separate trays which can further be separated into multiple compartments with positioning subdividers in predetermined slots disposed in the structure of the trays. The individual trays can be divided into zones of areas by positioning the subdividers from an inner edge to an outer edge of the tray (see Figure 4). Falk does not teach of positioning the subdividers in as radially askew orientation within the way. The second cited reference of Krakauer (see Figure 2,4 and 5) clearly shows a subdivider (96; Figure 4) disposed in a tray in an askew orientation to create compartment zones.

It would have been obvious to one of ordinary skill in the art at the time the invention was made when viewing the teaching of Falk in view of Krakauer in view of Varley that the teaching of Falk be modified such that the subdividers which extend from the inner edge to the outer edge can be disposed in an askew orientation which as a

result will be in a “radially askew” orientation. Thus the new grounds of rejection are based of the teaching Falk in view Krakauer. See claims above.

24. Referring to claims 3,5,7,12,14,16,19. In response to applicant's argument that “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine references teachings”, it is understood that the general knowledge available to one of ordinary skill in the art when viewing the teaching of Falk, Krakauer and Varley would have been obvious to combine and modify the teaching as stated in the claims above. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

25. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

26. Referring to claims 5 and 7. The applicant recites a specific combination of number of level of trays, a specific number of trays in a level, level spacing and the number of tray zones disclosed in the apparatus as means for allowance for the claimed invention. The applicant is reminded that the cited prior arts all teach and contain different number of levels that are disposed in the apparatus (Falk-9 levels, Krakauer-11 levels and Varley-5 levels) furthermore, each apparatus contains a different number of trays per level along with a different level of spacing and a different number of zones per each tray in the apparatus. It would have been obvious to one of ordinary skill in the art at the time the invention was made when viewing the teaching of Falk in view of Krakauer in view of Varley to develop any specific combination of the features as stated above depending of the products to be dispensed. Thus, by merely changing the combination of the number of levels, trays, level spacing and the number of zones per tray is not considered to be beyond one of ordinary skill the skill.

27. Referring to claims 5 and 7. The applicant recites the "catch on the tray subdivider" as not being disclosed in cited arts. The applicant is reminded to consider the teachings of the cited arts as a whole wherein the teaching of Varley clearly show a "catch" mechanism (structure as disclose in the applicants claims) disposed on the outer edge of the level tray (Figure 5). Varley discloses a "catch" disposed at every location where the a tray end joins another tray end and furthermore at locations where the subdividers are positioned (see dashed line subdividers in Figure 5) to allow the tray to stop when a particular zone is selected. As stated above in the claims it would have

been obvious to one of ordinary skill in the art at the time the invention was made to have positioned the catch mechanism onto the vertical portions and the subdividers of the tray, see claims above.

28. Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

29. Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see

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RK
March 16, 2006



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